

**SUPREME COURT CALENDAR  
SAN FRANCISCO SESSION  
MAY 29 and 30, 2002  
(SECOND AMENDED)**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom located at 350 McAllister Street, Fourth Floor, San Francisco, California, on May 29 and 30, 2002.

**WEDNESDAY, MAY 29, 2002—9:00 A.M.**

- |     |         |  |
|-----|---------|--|
| (1) | S095474 | Bird v. Saenz<br><i>(Chin, J., not participating. Parrilli, J., assigned Justice Pro Tempore.)</i>   |
| (2) | S091308 | Filarsky v. Superior Court; City of Manhattan Beach  |
| (3) | S017657 | Jesse Andrews on Habeas Corpus<br><i>(George, C.J., not participating. Morrison, J., assigned Justice Pro Tempore.) (To be called and continued to June 5, 2002 calendar.)</i> |

**1:30 P.M.**

- |     |         |   |   |
|-----|---------|---|---|
| (4) | S089120 | People v. Acosta                                    | } (Consolidated cases<br>to be argued together) |
| (5) | S068743 | People v. Cornelius                                 |   |
| (6) | S097755 | People v. Johnson                                   |   |
| (7) | S018634 | People v. Isaac Gutierrez <i>[Automatic Appeal]</i> |   |

**THURSDAY, MAY 30, 2002—9:00 A.M.**

- |      |         |                   |
|------|---------|-------------------|
| (8)  | S082112 | People v. Hurtado |
| (9)  | S092179 | People v. Wutzke  |
| (10) | S085780 | People v. Crayton |

**1:30 P.M.**

- |      |         |   |
|------|---------|---|
| (11) | S097765 | People v. Garcia                              |
| (12) | S086518 | Dart Industries v. Commercial Union Insurance |

GEORGE  
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT CALENDAR  
SAN FRANCISCO SESSION  
MAY 29 and 30, 2002**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**WEDNESDAY, MAY 29, 2002—9:00 A.M.**

***(1) Bird v. Saenz, S095474***

#01-47 Bird v. Saenz, S095474. (B134886; 86 Cal.App.4th 167.) Petition for review after the Court of Appeal reversed the summary judgment in a civil action. The court limited review to the following issue: Can plaintiffs (daughters of the injured patient) state a cause of action for negligent infliction of emotional distress against defendant physicians even though they did not witness the alleged negligence during their mother's surgery, if they were present at the hospital and witnessed both the immediate aftereffects of the alleged negligence on their mother and the hospital's activity that occurred prior to their mother's return to surgery?

***(2) Filarsky v. Superior Court, S091308***

#00-141 Filarsky v. Superior Court, S091308. (B139018; 82 Cal.App.4th 1057.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case includes the following issue: After a public agency has denied the request of a member of the public for disclosure of documents under the California Public Records Act, may the agency bring an action for declaratory relief to determine the agency's obligation under the Public Records Act?

***(3) Jesse Andrews on Habeas Corpus, S017657 (George, C.J., not participating. Morrison, J., assigned Justice Pro Tempore.) (To be called and continued to June 5, 2002 calendar.)***

**1:30 P.M.**

***(4) People v. Acosta, S089120***

#00-104 People v. Acosta, S089120 (B132967; 80 Cal.App.4th 714.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense.

***(5) People v. Cornelius, S068743***

#98-56 People v. Cornelius, S068743 (D027176; 61 Cal.App.4th 221.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses.

*Acosta* and *Cornelius* have been consolidated for argument in one time slot. The cases include the following issues: (1) Do the One Strike Law for felony sex offenses (Pen. Code, § 667.61) and the Three Strikes Law (Pen. Code, § 1170.12) operate together or as alternative sentencing schemes? (2) Can the same prior conviction be used both to trigger application of a 25-years-to-life sentence under the One Strike Law and (i) as a strike under the Three Strikes Law and/or (ii) to add a five-year enhancement to the defendant's sentence under Penal Code section 667(a)?

***(6) People v. Johnson, S097755***

#01-88 People v. Johnson, S097755. (A091500; 88 Cal.App.4th 420.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case includes the following issue: May a trial court condition a grant of probation upon a defendant's waiver of custody credits under Penal Code section 2900.5?

***(7) People v. Isaac Gutierrez, S018634 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**THURSDAY, MAY 30, 2002—9:00 A.M.**

***(8) People v. Hurtado, S082112***

#99-158 People v. Hurtado, S082112. (D029586; 73 Cal.App.4th 1243.) Petitions for review after the Court of Appeal affirmed an order committing defendant as a sexually violent predator. This case presents the following issue: Does a commitment under the Sexually Violent Predators Act require that the trier of fact find that the defendant is

likely to commit future “predatory acts,” i.e., acts directed “toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization?”

**(9) *People v. Wutzke*, S092179**

#00-159 *People v. Wutzke*, S092179. (D033221; 83 Cal.App.4th 622.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Is a criminal defendant who has been convicted of lewd acts on children in violation of Penal Code section 288(a), and who is the longtime, live-in companion of the grandmother of the victims, a “relative” of the victims within the meaning of Penal Code section 1203.066(c)(1), and thus eligible to be granted probation?

**(10) *People v. Crayton*, S085780**

#00-34 *People v. Crayton*, S085780. (B125826; 77 Cal.App.4th 307.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: When a defendant in an initial appearance in municipal court has been fully advised of his right to be represented by counsel throughout the proceedings (including trial) and has knowingly and voluntarily waived the right to counsel and has invoked his right to represent himself, and thereafter, at the arraignment on a felony information in superior court, the court fails to readvise the defendant of the right to counsel and to obtain a renewed waiver of that right as required by Penal Code section 987, what prejudicial error standard applies?

**1:30 P.M.**

**(11) *People v. Garcia*, S097765**

#01-94 *People v. Garcia*, S097765. (B141994, B149050; 88 Cal.App.4th 794.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of a criminal offense and denied a petition for writ of habeas corpus. This case presents the following issue: Can an enhancement be imposed on an aider and abettor under Penal Code section 12022.53(e) for another person’s personal use of a firearm in a felony that the jury finds was committed for the benefit of a criminal street

gang within the meaning of Penal Code section 186.22(b), even if the person who allegedly personally used the firearm was not convicted of the underlying felony?

***(12) Dart Industries, v. Commercial Union Insurance, S086518***

#00-60 Dart Industries, v. Commercial Union Insurance, S086518. (B129601; 77 Cal.App.4th 916.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Must the specific language of a lost insurance policy be shown to establish coverage, and, if so, by what standard of proof?